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WTO PANEL DECIDES AGAINST INDIA ON EXPORT PROMOTION SCHEMES

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On 31 October 2019, a specialised panel constituted by the World Trade Organisation (WTO) released a report recommending the withdrawal of several export promotion schemes which are integral to India's foreign trade policy.

Background

The panel was constituted on 28 May 2018 by the Dispute Settlement Body (DSB) in response to a reference made by the United States (US) to the WTO. The reference was made to examine whether certain identified export promotion schemes by India were violative of the Agreement on Subsidies and Countervailing Measures (SCM).

Article 3.1(a) read with Article 3.2 of the SCM prohibits member countries from granting or maintaining a subsidy which was contingent (whether in law or fact) on export performance.

Reference by US

As per the WTO Secretariat's annual reports published in 2017 and 2018, India had crossed the gross national product (GNP) per capita threshold of USD 1000 for the periods 2013-15 and 2014-16.

Basis this, the US invoked the special dispute settlement mechanism (under the DSU) by asserting that the following export promotion schemes would tantamount to subsidies that are prohibited in terms of the SCM and that India being a member country would be required to phase them out:

- Export oriented undertaking (EOU) / Electronics Hardware Technology Parks (EHTP) / Software Technology Parks (STP) / Bio-Technology Parks (BTP) Schemes
- Special Economic Zones (SEZ) Schemes
- Export Promotion of Capital Goods (EPCG) Schemes
- Duty Free Import Schemes (DFIS) **(***9 (nine) specific customs duty exemptions under Notification No. 50/ 2017- Customs dated 30 June 2017 which have specific export performance conditions***)**

- Merchandise Export from India Scheme (MEIS).

Submissions by India

- India primarily disputed the basis of the reference and submitted that there is no violation of Articles 3.1(a) and Article 3.2 of the SCM as it enjoyed an exemption for 8 (eight) years upon graduation as well under Article 27.2 of the SCM. The literal reading of Article 27.2 of SCM, however, indicates that a reprieve was granted to developing countries for 8 (eight) years from the date of the WTO Agreement (1995) coming into force.

- India defended the identified export promotion schemes on the ground that these do not qualify as prohibited export subsidies and instead qualify as the "permitted duty remissions / exemptions" as per Footnote 1 to Annexure 1 of the SCM.

Findings of the Panel

The panel in its report dated 31 October 2019, dismissed the submissions put forth by India and found that all the identified export promotion schemes, in fact, qualify as prohibited subsidies under the SCM. The panel recommended that India should phase out the EOU / EHTP / STP / BTP Schemes, EPCG Scheme, SEZ Scheme and MEIS within 120 days and the DFIS should be phased out within 90 days from the date on which the report is accepted.

Comments:

MEIS, EPCG and the other disputed schemes have been popular among the Indian exporters. Withdrawal of these benefits will hamper pricing of products and the international competitiveness.

While the recommendations of the panel must be accepted by DSB within 60 days of circulation to WTO members, India has the option to file an appeal against the panel's report before the Appellate Body of the WTO. In the alternative, India will need to revise the export benefits to make them WTO compliant.

Nevertheless, the trade will have to be compensated in the long run to ensure attractiveness of the 'Make in India' schemes.

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